In the
Supreme Court of the United States

OCTOBER TERM 1960
NO. 283

FIRST NATIONAL BANK OF CHIPPEWA FALLS, A CORPORATION
Plaintiff and Petitioner

vs.

CHARLES HENNEMAN COMPANY, A CORPORATION
Defendant

ANDY JOHNSON AND VIOLET JOHNSON
Defendants and Petitioners

UNITED STATES OF AMERICA
Defendant and Respondent

FRANK HAUPTMANN AS RECEIVER OF CHARLES HENNEMAN COMPANY
Defendant

CHIPPEWA COUNTY
Defendant and Respondent

REPLY BY JOINT PETITIONERS TO BRIEFS OF UNITED STATES AND CHIPPEWA COUNTY

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REPLY BY JOINT PETITIONERS TO BRIEFS OF UNITED STATES AND CHIPPEWA COUNTY

ARGUMENT

I.

Reply to arguments concerning the first federal question.

A. Our failure to cite authorities on this question was not due to lack of them.

Our first federal question challenges the ability of the County to levy and collect taxes upon the portion of the property taken by the federal lien after that lien attached. Our position is that no more than the mortgagees' interest can be lawfully taxed once the federal lien attaches. This finds considerable support in the statutes and decisions.

Both the United States and the County have implied in their briefs that our failure to cite cases on this point implies that there are none favoring our position. This is not so, as their reading of the briefs in the Wisconsin Supreme Court should have told them. We did not argue the merits at length because we understood that the petition for certiorari should be devoted to the importance of the question and the reasons why the writ should issue, not the merits of the case.

There is a long line of lower federal decisions which say that once a federal lien has attached the property has two owners; the record owner, and the government. Cases so saying are:

U. S. v. Greenville (1941), C. C. A.-4th, 118 F. 2d 963;

U. S. v. Cox (1953), D. C.-N. Dist. Ga., 119 F. Supp. 147;

Commissioner v. Coward (1940), C. C. A.-3rd, 110 F. 2d 725;

Welch v. U. S. (1955), C. C. A.-D. C., 220 F. 2d 200;

U. S. v. Metropolitan Life Ins. Co. (1958), 256 F. 2d 17;

U. S. v. Durham Lumber Co. (1958), 257 F. 2d 570;
Highsmith v. Lair (1955), 281 P. 2d 865.

In addition, *26 U. S. C.* 3704(c)(2), now *26 U. S. C.* 6339(b)(2), provides that if property subject to a federal lien is sold at distraint, the deed given shall have the effect of passing all of the title of the record owner as of the date the U. S. lien attached.

Clearly, the above decisions and the statute indicate that the lien is more than a security interest.

This is borne out by the following decisions holding that once the federal lien has attached, local government may not tax the federal interest.

U. S. v. City of New York (1956), C. C. A.-2d, 233 F. 2d 307;
U. S. v. Maddas (1953), D. C.-W. D. Pa., 109 F. Supp. 607;
Cobb v. U. S. (1949), C. C. A.-D. C., 172 F. 2d 277.

After the petition was filed, we learned of the decision of *Borock v. City of New York* (1959), 268 F. 2d 412. That case holds that the federal lien does not constitute more than a security interest and appears to conflict with the other cited cases.

The lucky fact that there are mortgages on the debtors' property should not change the taxability of the federal interest. Certainly, if any tax can be collected, it can only be a tax on the value of the mortgagees' interest.

B. Cases cited by the County do not apply.

The County cites two cases which it says have determined that the property must not be split up into separate interests for taxation purposes. These are *New Brunswick v. United States* (1928), 276 U. S. 547, 72 L. Ed. 693, 48

S. Ct. 371, and *S. R. A. Inc. v. Minnesota* (1955), 327 U. S. 558, 90 L. Ed. 851, 66 S. Ct. 749. Neither of these cases deals with property taken by a federal income tax lien. Each holds that an individual buying land from the government on land contract may be taxed on the whole value of the land without any deduction for the federal interest. This is a far different situation than ours, because in those cases, the individuals were in the process of obtaining title to all of the property. That is not true in our case. No matter what the mortgagees do they can never recover more than the amount of their mortgages.

C. The New Britain case is of limited application.

United States v. New Britain (1954), 347 U. S. 81, 98 L. Ed. 520, 74 S. Ct. 367 does not deal with the validity of local taxes, but rather with the relative priority of a local tax as against the federal lien. Insofar as the legality of the local tax is concerned, it is of no help at all in this case.

In the *New Britain* case, no issue was presented between the mortgagee and the local tax in this Court. The mortgagee was not even a party to the appeal. Justice Minton, in the opinion, did volunteer the dictum that relative priority between mortgagees and local tax liens was a matter of state law, and of no concern to the United States. This statement is important because it disposes of so many questions raised here without hearing any argument on them.

It is our position that Congress did not intend a superpriority for real estate taxes in enacting *26 U. S. C.* 3672 (now *26 U. S. C.* 6323). We think it clear that Congress did not intend that local taxes could be fully paid in a case like this one, where the federal lien goes substantially unpaid.

D. The federal lien did exceed the value of the Henneman Company's interests.

The County argues that a sale in 1955 is not evidence of the value of the company's property in 1951. We disagree. After the federal lien attached in 1951, any sale of the property would have been a forced sale. The Company could not expect to receive a top price in that situation.

Even using the assessed valuation for 1951 (Appendix I) the lien far exceeded the value of the Company's property. Total assessed valuation was $99,150.00. The mortgages amounted to about $26,000.00 leaving a net value of the Company's interest of $73,150.00, while the federal lien was in excess of $96,000.00.

We ask the Court to take judicial notice of the assessment figures. It is perfectly proper to do this. The County was allowed to supply, in the Wisconsin Supreme Court, a complete statement of taxes, even though these had never been pleaded or proved (Record pages 69-72, 94, 97, 157, 158).

E. Summary.

There is a long line of cases supporting the result we ask the Court to reach here. The cases cited by the County do not apply because they do not deal with mortgagees who cannot acquire all title to the property, and lastly the federal lien did exceed the value of the Henneman Company's property when it was filed. This question is new and has never been decided by this Court.

II.

The second federal question dealing with the mortgagees' right to pay local taxes, if valid, is open in this court.

We included the second question in our petition because it was specifically left open by this Court when it decided *U. S. v. New Britain*.

Respectfully submitted,

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APPENDIX I.

	Assessed Valuation
Lot 4, Block 9, Allen's Addition	$ 4,370.00
Lots 5 and 6, Allen's Addition	87,940.00
Lot 8, Block 5, Allen's Addition	1,860.00
The North One-half of Lot 1, Block 5, Mansfield's Addition	4,980.00
Total Assessed Valuation of above real estate:	$99,150.00

I, Elsie Brinkman, County Treasurer in and for Chippewa County, Wisconsin, hereby certify that the annexed and foregoing is a true and correct transcript of the assessments of the above described real estate for the year 1951, on file and of record in my office for the year 1951.

In testimony whereof, I have set my hand this 7th day of September, 1960.

ELSIE BRINKMAN,
County Treasurer,
Chippewa County, Wis.